

## REMARKS

This application is a continuation of U.S. Patent Application Serial No. 09/252,840. In the final Office Action dated May 6, 2003 for that application, the Examiner rejected claims 1-6, 8, 9 and 16-21 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,421,720 ("Fitzgerald"). Claims 10 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald. Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald in view of RFC ("RTP: A Transport Protocol for Real-Time Applications," Schulzrinne et al., January 1996). Claims 11-15 were allowed. In response, Applicants canceled claims 1-10 and 16-22 and subsequently received a Notice of Allowance.

Claims 1-10 and 16-22 in this application have been amended to be in the same state as they were in the previous application when Applicants received the final Office Action, except that claim 4 has been additionally amended to replace "contains" with "includes." Applicants submit a § 1.131 declaration, along with a copy of their 3Com Invention Disclosure Form, to "swear behind" Fitzgerald and thereby overcome the 103(a) rejection of these claims set forth in the previous application. As stated in the declaration and also evidenced by the Invention Disclosure Form, Applicants' invention occurred at least as early as October 27, 1998, which is prior to the October 28, 1998 filing date of Fitzgerald. The invention occurred in the United States, and Fitzgerald does not claim the same patentable invention as Applicants' claims 1-10 and 16-22. Therefore a § 1.131 declaration can be used to antedate Fitzgerald.

## CONCLUSION

Fitzgerald cannot form the basis of a proper rejection of Applicants' claims. Therefore, Applicants submit that the application is in condition for allowance and respectfully request early notice to this effect. If any questions or issues remain, the Examiner is invited to contact Applicants' attorney, Brian Harris, at his direct dial number (312) 913-3303.

Respectfully submitted,

Date: December 15, 2003

By:



Brian R. Harris  
Reg. No. 45,900